SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
SEP 26 1973
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-229

MARSHALL P. SAFIR,

Petitioner,

—v.—

ROBERT W. BLACKWELL, Assistant Secretary of Commerce for Maritime Affairs, Successor to and Substituted for ANDREW GIBSON; JAMES S. DAWSON, JR., Secretary Maritime Subsidy Board and FREDERICK DENT, Secretary of Commerce, Successor to and Substituted for MAURICE STANS,

Respondents.

PETITIONER'S REPLY MEMORANDUM

MARSHALL P. SAFIR, *Pro se,*
41 Flatbush Avenue,
Brooklyn, N. Y. 11217
(212) 858-2700

September 26, 1973

IN THE

Supreme Court of the United States

October Term, 1973

No. 73-229

MARSHALL P. SAFIR,

Petitioner,

—v.—

ROBERT W. BLACKWELL, Assistant Secretary of Commerce for Maritime Affairs, Successor to and Substituted for ANDREW GIBSON; JAMES S. DAWSON, JR., Secretary Maritime Subsidy Board and FREDERICK DENT, Secretary of Commerce, Successor to and Substituted for MAURICE STANS,

Respondents.

PETITIONER'S REPLY MEMORANDUM

The Maritime Subsidy Board decision that Section 810, 46 U.S.C. 1227 was violated was the final outcome of an *original action* filed by this petitioner in the United States District Court for the Eastern District of New York, Docket No. 67c-643.

The Maritime Subsidy Board investigation which culminated in the finding of violation was not undertaken voluntarily but was mandated by the Court of Appeals reversal of the district court's (the court of first instance) decision denying plaintiff's standing to sue for governmental recovery of subsidies improperly paid in the past.

In reversing the lower Court the Court of Appeals clearly indicated its intent to maintain a close and continuing scrutiny of the agency action mandated in the threshhold decision 417 F.2d 972 (Pet. App., pp. 172a-173a).

The Court of Appeals, while it denied the "motion"* (thereby setting the stage for this Petition for Certiorari) did so not as a result of any jurisdictional misgivings on its part—to the contrary, the order in its abundance affirms this jurisdiction by precluding *any* remand to the district court (Pet. App., p. 1).

Respondent counsel continues to view the case as "unripe" in that it does not meet a test for finality after 6 years of litigation in the Federal Courts and 9 years after litigation in the Federal Maritime Commission; citing *Boston Marine Terminal Association* v. *Rederiakiebobloget Transatlantic*, 400 U.S. 62, 71. Counsel ignores the interpretation of Section 10(c) 5 U.S.C. § 704 in the decision in the Ninth Circuit in 1971 *United States* v *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 436, 439—wherein that court broke "new ground in holding that the doctrine of exhaustion of administrative remedies does not require completion of appellate or review proceedings within the agency."

Indeed, the Maritime Subsidy Board itself has recently been defeated in United States District Court for the District of Columbia in *American Maritime Association* v. *Blackwell, et al.*, Civil Action No. 1576-72 (see Pet. App. E, p. 9a) on this very issue. The Court cited this very decision. The Board did not appeal.

---

* Petitioner's Appendix 119a-120a.

This case is not distinguishable. In this case the Board by letter to Michael McMorrow Public Counsel (see App. F., p. 10) held as "unfinal" and "inoperative" only its decisions on *liability* for the violation. The finding of violation of the act itself was no longer preliminary but "operative" and final.

The question presented in this petition 73-229 specifically addresses itself to the Board's lack of discretionary power on the liability issue. It is ripe for review.

CONCLUSION

For the added reasons set forth above the petition for certiorari should be granted.

Respectfully submitted,

MARSHALL P. SAFIR, *Pro se,*
41 Flatbush Avenue,
Brooklyn, N. Y. 11217
(212) 858-2700

September 26, 1973